

EXHIBIT 1

INTRODUCTION

Respondent Kenneth Wallace was a member of the Board of Directors for the Midway Heights County Water District (the “MHCWD”) from 1996 through 2002. The MHCWD is a county water district responsible for maintaining a water system to supply drinking and irrigation water for real properties located in the Weimar-Colfax-Applegate area of Placer County.

In this matter, as a MHCWD board member, Respondent Wallace failed to disqualify himself from making and participating in making governmental decisions concerning the water system project for the Coyote Hills Estates subdivision. The boundaries of the Coyote Hills Estates subdivision were adjacent to real property in which Respondent Wallace had an economic interest.

For the purposes of this stipulation, Respondent’s violations of the Political Reform Act (the “Act”)¹ are stated as follows:

COUNT 1: On or about May 11, 2000, Respondent Kenneth Wallace participated in making, and made a governmental decision regarding an amendment to the Coyote Hills Estates Mainline Extension Agreement to allow a portion of the project related to Lots 5, 6, and 7 (Part I) to be completed separately from the remaining water system project (Part II), in which he knew or had reason to know he had a financial interest, in violation of section 87100 of the Government Code.

COUNT 2: On or about December 14, 2000, Respondent Kenneth Wallace participated in making, and made a governmental decision to accept the Coyote Hills Estates water system project improvements (Part II), in which he knew or had reason to know he had a financial interest, in violation of section 87100 of the Government Code.

SUMMARY OF THE LAW

Section 81001, subdivision (b) states that public officials should perform their duties in an impartial manner, free from bias caused by their financial interests or the financial interests of persons who have supported them. In order to accomplish this purpose, section 87100 prohibits a public official from making, participating in making, or attempting to use his or her official position to influence any governmental decision in which the official knows or has reason to know that he or she has a financial interest.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

Section 82048 defines a “public official” to include every member, officer, employee, or consultant of a state or local agency. A public official “makes a governmental decision” when the official votes on a matter, appoints a person, commits his or her agency to a course of action, or enters into a contractual agreement on behalf of his or her agency. (Regulation 18702.1, subd. (a).)

Regulation 18702.2, as it was in effect in 2000, provided that a public official “participates in making a governmental decision” when, acting within the authority of his or her position, the official advises or makes recommendations to the decision-maker either directly or without significant intervening substantive review, by preparing or presenting any report, analysis, or opinion, orally or in writing, which requires the exercise of judgment on the part of the official, and the purpose of which is to influence a governmental decision.

Under section 87103, subdivision (b), as it was in effect in 2000, a public official has a “financial interest” in a governmental decision within the meaning of section 87100, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on any real property in which the public official has a direct or indirect interest worth \$1,000 or more.²

Section 82033, as it was in effect in 2000, defined an interest in real property as any leasehold, beneficial or ownership interest, or an option to acquire such an interest, in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family, if the fair market value of the interest is one thousand dollars (\$1,000) or more. Pursuant to section 82035, real property is deemed to be within the jurisdiction with respect to a local government agency if the property, or any part of the property, is located within or not more than two miles outside of the boundaries of the jurisdiction, or within two miles of any land owned or used by the local government agency.

Whether there is a reasonably foreseeable material financial effect on an economic interest depends on the nature of the interest, and whether the interest is directly or indirectly involved in the governmental decision.

Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends on the facts of each particular case. An effect of a decision on real property is considered “reasonably foreseeable” if there is a substantial likelihood that it will affect property values, either positively or negatively, or will alter or change the use the property in some manner. Certainty of the effect is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)³

² In January 2001, the threshold amount was increased to \$2,000 for interests in real property.

³ The *Thorner* opinion was codified in regulation 18706 to provide that a material financial effect on an economic interest is reasonably foreseeable, within the meaning of section 87103, if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision.

Under the Act, different conflict of interest provisions apply if the public official's economic interest is "directly" or "indirectly" involved in a governmental decision. Pursuant to regulation 18704.2, subdivision (a), as it was in effect in 2000, an interest in real property is "directly involved" in a governmental decision before a public official's agency if: 1) the decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of real property in which the public official has a direct or indirect interest of \$1,000 or more, or a similar decision affecting such property; 2) the decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses for such property; 3) the decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on such property; or 4) the decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and the real property in which the official has an interest, or any part of it is located within the boundaries (or proposed boundaries) of the redevelopment area.

Under regulation 18704.2, subdivision (b), as it was in effect in 2000, if the real property is "directly involved" in a governmental decision, the materiality standards in regulation 18705.2, subdivision (a) apply. If the real property is not "directly involved," as described above, it is considered "indirectly involved" in the governmental decision, and the materiality standards in regulation 18705.2, subdivision (b) or (c) apply.

Under regulation 18705.2, subdivision (a), any reasonably foreseeable financial effect on real property in which a public official has an economic interest, and which real property is "directly involved" in a decision before the official's agency, is deemed material.

Under regulation 18705.2, subdivision (b)(1)(A), as it was in effect in 2000, and which pertains to "indirectly involved" real property interests, the effect of a decision is material as to real property in which the official has a direct, indirect or beneficial ownership interest, if the real property, or any part of the real property, is located within a 300 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interest. This is commonly referred to as the "one penny" rule. This rule means that if the decision will have any financial effect (even one penny's worth) on the real property so located, it is deemed material.

SUMMARY OF THE FACTS

Respondent Kenneth Wallace was a member of the MHCWD Board of Directors from 1996 through 2002. The MHCWD is a county water district responsible for maintaining a water system to supply drinking and irrigation water for real properties located in the Weimar-Colfax-Applegate area of Placer County. The MHCWD Board of Directors reviews and approves proposed water system projects and connections to the district's water system, as part of county building projects located within the MHCWD.

In July 1994, Walter Gerald submitted an application to Placer County for the development of a 43-acre residential subdivision known as Coyote Hills Estates ("CHE"). The CHE project was a 12

lot subdivision, with one of the lots being Mr. Gerald's existing residence. Mr. Gerald's lot was 24 acres in size, and the remaining 11 lots were between 3 to 6 acres in size. The project was located near the intersection of Coyote Hills Road and Bridle Path Road in Placer County, and within the boundaries of the MHCWD. In order to proceed with the subdivision, Walter Gerald was required to obtain approvals from the MHCWD for a water system project to provide water service to CHE.

In 1995, Mr. Gerald and the MHCWD entered into a mainline extension agreement to provide for the extension of the district's water facilities and eventual water service for the CHE subdivision. As part of the agreement, Mr. Gerald was required to present plans and specifications for the water system project to MHCWD for approval. In addition, it was necessary for the MHCWD Board of Directors to grant final approval of the completed water system project before water service could be established for the subdivision.

In 1996, Respondent Wallace began serving on the MHCWD Board of Directors. At the time, Respondent Wallace had an ownership interest in real property whose boundaries were contiguous with the boundaries of the CHE project. Respondent Wallace's real property interest consisted of a five acre parcel owned by American Eagle Development Corporation, a business entity in which Respondent Wallace was a 45% shareholder along with his uncle, Thomas Jacobsen, Jr., who owned 55% of the shares. The five acre parcel was vacant and offered for sale as real estate development property. The fair market value of Respondent Wallace's real property interest was in excess of \$1,000. Based on this real property interest, located within 300 feet of the CHE project boundaries, Respondent Wallace should have disqualified himself from making and participating in making any decisions regarding the CHE project, which would have a reasonably foreseeable material financial interest on his real property interest.

In early 1998, Walter Gerald and his daughter, Beth Armstrong, raised the issue of Respondent's possible conflict of interest as a member of the MHCWD Board of Directors based on his interest in real property located adjacent to the CHE development. In 1991, Mr. Gerald had sold the above five acre parcel, along with two other five acre parcels, to Respondent and Mr. Jacobsen for \$345,000. Later the same year, the real property was transferred to American Eagle Development Corporation, and offered for sale. Between August 2001 and October 2002, American Eagle Development Corporation sold the three parcels for \$190,000 each.

COUNT 1

Failure to Disqualify Himself from Making a Governmental Decision on May 11, 2000

On May 11, 2000, the CHE water system project came before the MHCWD Board of Directors for discussion and vote. Walter Gerald requested an amendment to the 1995 mainline extension agreement to allow a portion of the project, which served Lots 5, 6, and 7, to receive final approval separate from the remaining water system project. Mr. Gerald requested the amendment in order for Lots 5, 6, and 7 to receive a final approval from the county so that they could be sold more quickly. The three lots did not involve the pumping and storage facilities that were being constructed under the mainline extension agreement to serve the remaining lots in the subdivision. The three lots at issue could obtain water service from the existing MHCWD water storage and transmission facilities.

Respondent participated in the discussion regarding amending the mainline extension agreement to separate Lots 5, 6, and 7 from the pending water system project. Respondent voted in favor of the motion, which passed by a vote of 4 to 0. The approval of the water system project for Lots 5, 6, and 7 was referred to as Part I of the overall water system project for the CHE development, and the remaining lots were referred to as Part II.

At the time of the above decision, Respondent had an ownership interest in real property located adjacent to the boundaries of the CHE project. Respondent's real property interest was "indirectly involved" in the decision to approve the amendment to the mainline extension agreement, since it was not "directly involved" in the decision under regulation 18704.2, subdivision (a).

Since Respondent's real property interest was located within 300 feet from the boundaries of the CHE project, the property that was the subject of the decision, the effect of the decision is deemed material, unless there would be no effect on Respondent's real property interest as result of the governmental decision. It was reasonably foreseeable that the approval of an amendment to the mainline extension agreement would have some effect on Respondent's real property interest, in that there was a substantial likelihood that the approval of the water system project for Lots 5, 6, and 7 would lead to a final county approval for Part I of the CHE project. As such, Respondent's real property interest would be in sales competition with Lots 5, 6 and 7, and therefore, could be affected by the final approval for Lots 5, 6, and 7.

By making and participating in making a governmental decision on May 11, 2000, regarding an amendment to the CHE project's mainline extension agreement for Lots 5, 6, and 7 (Part I), in which he knew or had reason to know he had a financial interest, Respondent violated section 87100.

COUNT 2

Failure to Disqualify Himself from Making a Governmental Decision on December 14, 2000

On December 14, 2000, the CHE project came before the MHCWD Board of Directors for discussion and vote regarding the final acceptance of Part II of the CHE subdivision's water system project. Respondent participated in the discussion regarding the final approval of the CHE water system project. Respondent voted in favor of the motion, which passed by a vote of 4 to 0, with one director abstaining. The final acceptance of the water system project for the CHE subdivision was necessary for the development to receive final county approval.

At the time of the above decision, Respondent had an ownership interest in real property located adjacent to the boundaries of the CHE project. As stated above, Respondent's real property interest was indirectly involved in the decision to accept Part II of the water system project. Since Respondent's real property interest was located within 300 feet of the boundaries of the CHE project, the effect of the decision is deemed material unless there would be no effect on Respondent's real property interest as result of the governmental decision.

It was reasonably foreseeable that the final approval of the water system project would have an effect on Respondent's real property interest, in that there was a substantial likelihood that the approval of the water system project for the remaining lots in the subdivision would lead to the final county approval for the CHE project. Respondent's real property interest, located adjacent to the

boundaries of the CHE project, would be in direct sales competition with the CHE project, and therefore could be affected by approval of the water system project for the development.

By making and participating in making a governmental decision on December 14, 2000, regarding the final acceptance of the CHE water system project, in which he knew or had reason to know he had a financial interest, Respondent violated section 87100.

CONCLUSION

This matter consists of two counts of violating section 87100 of the Act, which carries a maximum administrative penalty of Four Thousand Dollars (\$4,000).

The issue of Respondent's potential conflict of interest situation was raised at the MHCWD board meetings as early as 1998. In response, Respondent sought legal clarification and guidance from MHCWD's legal counsel, and was given oral advice that he did not have a conflict of interest. However, MHCWD's legal counsel based the oral advice on Respondent's factual determination that the CHE project would not have any effect on Respondent's real property interest. At the request of MHCWD manager Ruth Mehl, the District's legal counsel reduced the oral advice to writing in a letter dated April 5, 2001. During 2000, and pursuant to the oral advice, Respondent continued to participate and vote on matters concerning the CHE project, which had some effect on the development and sale of his own real property interest.

Although his real property interest was materially affected by the decisions, MHCWD records reflect that Respondent's votes were in favor of the CHE project, and therefore, he was not attempting to gain a financial advantage for his own real property interest. Further, Respondent has no prior history of violating the Political Reform Act, and no longer serves on the MHCWD Board of Directors.

The facts of this case, including the foregoing aggravating and mitigating factors, justify imposition of the agreed upon penalty of Three Thousand Five Hundred Dollars (\$3,500).